

- 3.5 2014 Budget Transfers & Adjustments** Requested Action: Approve a budget transfer of \$250,000 in salary from Fund 520 (Wastewater) to Fund 510 (Water) to cover regular time salary expenses and a budget adjustment to decrease Transfers-In of \$300,000 in Fund 615 (Information Systems).
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the budget transfer and budget adjustment as described above.
- 3.6 HRA/VEBA Plan Changes** Requested Action: Authorize a change to the HRA/VEBA Basic Plan Document and Basic Plan Document Adoption Agreement with Genesis Employee Benefits, Inc., dba America's VEBA Solution.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to authorize the change as described in the agenda item.
- 3.7 Community Development Permit and Inspection Software - Approve Agreement** Requested Action: Award a contract to CityView, a Harris Company in the amount of \$469,855.00 with a 5% contingency of \$23,490.00 for a total approved project amount of \$493,345.00 for Permit and Inspection Software for the Community Development Department.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to award a contract to CityView.
- 3.8 Golf Cart Rental Contract - Approve Extension** Requested Action: Approve a contract extension with Yamaha Golf and Utility to provide rental golf carts for use at Dwan and Hyland Green Golf Courses for an additional three-year contract period through Nov. 15, 2017.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the contract extension as described above.
- 3.9 Nuisance Abatement - Approve Contract Extension** Requested Action: Approve a contract extension through December 31, 2015, with Universal Cleaning Services, Inc. to provide interior and exterior cleaning, abatement and demolition services for properties that have been declared public health nuisances and/or hazardous structures by Environmental Health staff.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the contract extension as described above.
- 3.10 Code Abatement Mowing - Approve Extension** Requested Action: Approve a contract extension through December 31, 2015, with Outdoor Perfection to provide code abatement mowing throughout the City on an as needed basis.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the contract extension as described above.
- 3.11 Fire Apparatus Maintenance and Repair - Approve Extension** Requested Action: Approve a contract extension through December 31, 2015, with Emergency Apparatus Maintenance for the inspections, maintenance, testing, and repair of the City's (17) heavy apparatuses, (8) light apparatuses, and (12) structural pumps within the City's Fire Department.
- Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the contract extension as described above.

3.12 Meeting Minutes City Council-Approval

Requested Action: Approve the following 2014 City Council Regular Meeting minutes as presented: July 21, August 4, and August 18.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the minutes as presented.

3.13 900 American Boulevard; Decision Regarding Repurchase TopLine Federal Credit Union

Requested Action: Adopt a resolution declining to repurchase the property located at 900 American Boulevard at the purchase price set forth in the Agreements between the City and TopLine.

Winstead asked if the conditions remain the same.

City Manager Mark Bernhardson replied if the City declines the purchase of property, then the conditions incumbent upon the sale go away. The property could be sold to another party or they could develop it in another way. It would need to fit the existing zoning.

Motion was made by Winstead, seconded by Abrams, and all voting aye, to adopt a resolution declining the repurchase of 900 American Boulevard. (R-2014-119)

3.14 2015 City Council Meeting Calendar Approve

Requested Action: Approve the City Council 2015 meeting calendar as presented.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to approve the 2015 Council meeting calendar as presented in the materials.

4 PUBLIC COMMENT PERIOD

Speaker #1: Sally Ness, 8127 Oakland Avenue South
She spoke about the Dar Al Farooq Youth and Family Center (AFYFC) at 8201 Park Avenue South and Smith Park. She urged the Council not to sign the Joint Use Agreement (JUA) because of the allowed all-night use of Smith Park and its parking lot. She read from various sources including previous City Attorney correspondence, the City Code regarding parks, and a previous memo from the City Manager and referenced the "controlling law" language in the different documents. She said the residents don't want any change in the City Code to allow parking in park parking lots past 10 p.m. She mentioned an easement that should have been handled in 2011 shouldn't be part of the current negotiations.

Winstead stated the JUA will be coming to the Council early next month.

Speaker #2: Don Specht, Resident

He desired to talk about Old Cedar Avenue but it's going to be postponed to the next meeting.

Winstead explained the hearing on Old Cedar Avenue will take place on December 1 so Mr. Specht should provide his testimony on that date.

Specht said he is a retired teacher and a wildlife photographer and he's concerned about the safety of pedestrians and people walking up and down Old Cedar Avenue. He said there needs to be a sidewalk or a bike lane for safety, as the road freezes and handles a lot of traffic.

Winstead said the reconstruction of Old Cedar Avenue is scheduled for December 1 and requested Specht to repeat his comments at that time.

Bernhardson said Engineering is very aware of Specht's comments adding it will be difficult to reconstruct that road due to the natural springs.

Speaker #3: Scott Pentula, 8712 Park Avenue South

As a 20-year Bloomington resident, he was horrified to hear about the organized collection possibility. He said it doesn't say in Section 7 of the amendment that there needs to be a competitive bid. He asked how a small operator could possibly cover all of Bloomington. He said absolute power absolutely corrupts and said there are more pressing issues facing the City.

Winstead said organized garbage collection is on the horizon and there's a legal process associated with it. He said the issues Pentula raised will be discussed by the haulers.

Pentula said it's not right if residents have contracts with their haulers and called this socialistic behavior.

Speaker #4: Jim Haeg, 8901 Fremont Avenue South

He wanted to talk about the assessment letter he received for a new street, curb and gutter.

Winstead said that item will be discussed later on tonight's agenda and asked Haeg to hold his comments until that item is called. He said anyone in the audience who is here for the ordering of the Pavement Management Program could talk with the engineers in the hallway to get any questions answered before that item comes up on the agenda.

The Mayor asked if anyone wished to address the Council during the public comment period, or it would be closed. No one else came forward to speak so the public comment period was closed.

5 LICENSING DIVISION: PUBLIC HEARINGS

5.1 Total Wine & More; New Off-Sale Intoxicating Liquor License

Requested Action:

- 1.) Council must first vote to affirm the ALJ's Findings of Fact or to amend them, based upon the facts as developed in the record, including the exhibits and recording of the hearing. The Findings of Fact drafted by the ALJ would support any of the following three options.
- 2.) Council must then decide whether or not the Findings of Fact support the Conclusion of Law that the Applicant is suitable for licensure in the City of Bloomington. The stipulated issue was:

Whether or not the Applicant, based on past activities or criminal record: a) poses a threat to the public interest or to the effective regulation and control of alcohol or b) creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and activities in the manufacture, sale, distribution or possession for sale or distribution of alcohol, or the carrying on of the business and financial arrangements incidental to the manufacture, sale, distribution, or possession for sale or distribution of alcohol?

The Council must choose one of the following three options:

- a) If the City Council, by majority vote, concludes that the Findings of Fact, as affirmed or amended, supports the Conclusion of Law that the Applicant is suitable for licensure, the motion should be to grant the off-sale intoxicating liquor license to the Applicant for a premises located at 4260 West 78th Street, Bloomington, Minnesota; or
- b) If the City Council, by majority vote, concludes that the Findings of Fact, as affirmed or amended, supports the Conclusion of Law that the Applicant is not suitable for licensure, the motion should be to deny the off-sale intoxicating liquor license to the Applicant for a premises located at 4260 West 78th Street, Bloomington, Minnesota; or
- a) If the City Council, by majority vote, concludes that the Findings of Fact, as affirmed or amended, supports a Conclusion of Law that the Applicant is conditionally suitable for licensure, the motion should be to direct staff to draft a resolution of conditional approval of the off-sale intoxicating liquor license to the Applicant for a premises located at 4260 West 78th Street, Bloomington, Minnesota that specifies conditions for licensure that address the Council's public health, welfare and safety concerns to be presented at the City Council's next regularly scheduled meeting on November 17, 2014.¹ Conditions could include:
 - i. The Applicant must not rent or reserve for private use any space within the licensed premises to entities not affiliated with the Applicant.
 - ii. The Applicant must provide the City Licensing Examiner with ten days advance notice of any educational tastings conducted on the licensed premises under Minn. Stat. §340A.419, along with a description of the educational content of the proposed class and where the City Licensing Examiner does not find adequate educational content, the proposed tasting must not occur on the licensed premises.
 - iii. The Applicant must provide the City Licensing Examiner with two days advance notice of any service or pouring of intoxicating liquor on the licensed premises under Minn. Stat. §340A.510 so that the Examiner may inspect the proposed tasting or sampling containers and otherwise ensure compliance with law and where the City Licensing Examiner does not find adequate safeguards in place, the proposed sampling or tasting must not occur on the licensed premises.
 - iv. The Applicant must have adequate and knowledgeable staff directly supervising all samplings and tastings on the licensed premises at all times to ensure compliance with law.
 - v. The Applicant must not allow any service or consumption of food on the licensed premises at any time by persons not employed by the Applicant.

⁵While a City has authority to impose conditions on a liquor license prior to its issuance *Bergmann v. City of Melrose*, 420 N.W.2d 663, 665-66 (Minn. App. 1988) and *Anton's Inc., v. City of Minneapolis*, 375 N.W.2d 504, 508 (Minn. App. 1985) it has very limited authority to impose conditions after a license's issuance. *In Re On-Sale Liquor License, Class B*, 763 N.W.2d 359 (Minn. App. 2009).

- vi. The Applicant must provide the City Licensing Examiner with immediate and complete access to all invoices relating to the source of, and price paid for, the intoxicating liquor in its inventory and be otherwise able to document strict compliance with Minn. Stat. §340A.305 along with MN Rule 7515.0520 that requires all off-sale intoxicating liquor retailers to purchase their stock of alcoholic beverages exclusively from duly licensed Minnesota wholesalers from a stock maintained in the state of Minnesota. Failure to provide the City Licensing Examiner or any duly authorized employee of the Minnesota Commissioner of Public Safety with free, unhindered access to these records that is free from any interference during reasonable hours at the licensed premises shall subject the license to revocation.
- vii. The Applicant must provide the City Licensing Examiner with immediate and complete access to all invoices relating to the source of, and price paid for, the intoxicating liquor in its inventory and be otherwise able to document strict compliance with Minn. Stat. §340A. 312 that limits the quantities of wine or spirits eligible for a volume discount. Failure to provide the City Licensing Examiner or any duly authorized employee of the Minnesota Commissioner of Public Safety with free, unhindered access to these records that is free from any interference during reasonable hours at the licensed premises shall subject the license to revocation.
- viii. The Applicant must not request, suggest, demand or accept any gratuity or reward, or promise of any thereof from any representative of a manufacturer or wholesaler of alcoholic beverages, including in-store servicing or stocking in violation of MN Rule 7515.0620.
- ix. The Applicant must provide the City Licensing Examiner with immediate and complete access to all invoices relating to the source of and price paid for the intoxicating liquor in its inventory and be otherwise able to document strict compliance with Minn. Stat. §325D.04 prohibiting the retail sale of product below cost. Failure to provide the City Licensing Examiner or any duly authorized employee of the Minnesota Commissioner of Public Safety with free, unhindered access to these records that is free from any interference during reasonable hours at the licensed premises shall subject the license to revocation.
- x. Such other conditions as determined necessary by the City Licensing Examiner for strict compliance with all laws applicable to the retail sale of intoxicating liquor.
- xi. Violations of any one of these conditions shall serve as grounds for the imposition of civil fines in the amount of \$2000 per verified violation, license suspension and/or license revocation. Failure to provide the City Licensing Examiner or any duly authorized employee of the Minnesota Commissioner of Public Safety with free, unhindered access to these records that is free from any interference during reasonable hours at the licensed premises shall subject the license to revocation.

Winstead asked City Attorney Sandra Johnson to clarify what has transpired to date on this item.

Johnson explained this application first appeared on a Council agenda in November 2013 and there has only been one continuance requested by the City; from November to December 2014 due to the amount of information City staff was provided that needed to be reviewed. She provided background on this process to date. She explained Bloomington's license is stricter and said when the state mandated background checks came back, it was recommended this application be reviewed by an Administrative Law Judge (ALJ). She said staff has no problem with the current application and the City Council has been provided with copies of the ALJ's report, which recommends the City grant the license. She explained the discretion the Council has with an application such as this that involves the public's health, safety and welfare. She said the City has the authority to impose conditions on the license. She said the ALJ discounted violations where there was a negotiated settlement short of conviction or a adjudicated civil charge. She said the ALJ's recommendation would support the findings for any of the three options before the Council; deny, approve or approve with conditions. She said it's not uncommon to negotiate a settlement that doesn't nick your record or hurt future applications. She said the ALJ's findings did include many proven allegations of liquor laws but the City only focused on the serious allegations. She then read about case violations involving Total Wine that took place in several states; most of which relate to record keeping but they are documented cases. She said the conditions are state law and in order for Total Wine to stay legal, they will have to work with the local licensing examiner, which the City has on staff, to ensure their premise stays law abiding. She said the process has been more than fair. Regarding the conditions, she said Condition "J" could be unpredictable so Council could remove that one.

Council comments/inquiries:

Baloga asked if any of the proposed conditions go beyond State law and Johnson explained Condition "J" relates to their "Book Our Room," which is not legal in Minnesota. She said Total Wine objects to the anti-trust law; selling liquor below cost. She said selling below cost is technically a violation. They look at are whether it's being done with the intent of running others out of business. She said if it occurred and there was a pattern of businesses closing, it would be turned over to the State. She added there is an educational loophole, which involves holding education classes on the premises and pouring liquor. She said it's important to control the pourings so there are enforcement techniques within this that aren't in State law. She said the conditions associated with this license provide enforcement mechanisms so the City can work with Total Wine before a violation occurs.

Bernhardson explained the Council has three choices: Unconditional approval, denial, or a conditional approval. He said the conditions go to the issues that were raised regarding this license application. He said the ALJ said it was a very difficult decision on his part. He said the Council is free to approve an unconditioned license. However, it makes it more difficult, if accusations arise, to ascertain if they exist without those conditions.

Winstead explained the procedure for tonight: A hearing has taken place before the ALJ so now it's up to the City Council. He said a hearing will take place tonight but with some limitations. He said Total Wine will present, then the lead person of the group opposed can speak briefly, and then any other speakers but they will be limited.

Council asked if the ALJ hearing was publicized in Bloomington and Johnson replied it was and that the testimony provided during the ALJ hearing was very detailed. Another member questioned why the standards are different regarding licenses in other cities such as Woodbury, Roseville and Burnsville. Johnson explained Bloomington has a full-time licensing examiner and a legal department, which other cities might not have. When asked how common it is for the City to use an ALJ when considering a license, Johnson said it's unusual and referenced the God Father's Pizza case in the mid 1980s

The question was asked why the City is putting conditions on a license an ALJ has recommended be approved; especially if the conditions are included in the ALJ's report. Johnson replied the conditions make the City's position clear. She said the City wants to be proactive with this license.

Another question was asked about the pourings and if there is something the other licensed establishments in Bloomington can't do compared to other cities. Johnson described what typically occurs with tastings in Bloomington and said the proposed conditions will ensure Total Wine is adhering to MN statutes.

Presenter #1: Mark Jacobson, Attorney Representing Total Wine
He stated Council will hear from David Trone, Total Wine Owner and President, Tom Heffelfinger, former U.S. Attorney, and John Johanson (landlord), and then he will wrap up their presentation.

Presenter #2: David Trone, Owner/President of Total Wine
He said the City's proposed conditions are not related to the ALJ hearing and his attorneys will address that. He said Total Wine follows state law. He said there is a difference between allegations and a adjudicated decision from the judge. He said he and his brothers are the owners and they're committed to their customers. He said they have low prices and a wide selection. He mentioned their employees, benefits, hiring process, commitment to safety, and their training program. He said he's never closed a store in 23 years. He described the work they do with over 4,000 non-profit organizations. He said Total Wine has the best record in America with regard to the sale of alcohol to minors because they card every customer. They currently have 758 store years and have had only 12 violations. He said he's never been turned down for a license. He's proud of his business, of his stores, and of his team. He said the City's process has been costly in terms of time and money. He said the City should grant Total Wine a license based on the City's independent process using an ALJ who ruled they should be granted a license without conditions.

Winstead stated the Council never said the ALJ's findings would be the determining factor in granting or denying the license. Johnson concurred and said it is a recommendation but the Council has the final say. She advised the Council to look at the findings in the record but not make new findings that are not part of that record unless it has hard evidence.

When Trone said Bloomington residents will love having a Total Wine in their community, Winstead said Total Wine's record of no sales to minors is phenomenal but what came forward from the ALJ was other issues that raised concerns for the City on the business side of it.

Lowman questioned why the \$1 million and \$40,000 fines were not provided in Total Wine's initial application. Trone provided an explanation adding they paid a settlement following an investigation that was going nowhere and that there were never fines to start with.

Trone explained the cases involving their stores in San Antonio, TX and in PA.

Lowman asked if there was a place on the City's license application to report past settlements. Johnson said the City asked for previous violations. The ALJ found both PA and NJ involved fines and that is why she used those terms. She said that is not on the application. She commented there were four license suspensions that did not go away for Total Wine until 2009.

Presenter #3: Tom Heffelfinger, Best & Flannigan Law Firm, Minneapolis
He was retained by Total Wine in December 2013 to conduct a background investigation into David and Robert Trone and their company RSSI. He's a former U.S. Attorney in MN. He said he conducts investigations and does litigation work for a living. He said he had never met the Trones before December. He turned the investigation over to Way Point and they involved federal agents and IRS staff. He said his job was to be an independent investigation. He is not here to advocate for Total Wine's license but to advocate for the integrity and accuracy of what was reported to Council in that investigation. He talked about an RSSI Report he said City staff and the Council has had access to for six months and said there were no fines in PA or NJ.

There was a long discussion back and forth between the Mayor and Heffelfinger regarding certain liquor law violations against Total Wine and the resulting settlements that were made and agreed to by Total Wine. The Mayor read from the ALJ's report and Heffelfinger addressed the various issues.

Heffelfinger stated he first learned of the City's resolution with conditions a few days ago. He addressed the following issues that resulted in the City's imposition of conditions: Selling below cost, selling below cost violations, warnings for tastings in TX and VA, and the violations relating to food sales in TX and GA. He said his report was provided to the Burnsville and Woodbury City Councils and talked about his experience appearing before both of those bodies.

Presenter #4: John Johanson, Welsh Companies

He said he's been representing the landlords of the shopping center where Total Wine has wanted to locate for many years. He said the center got hit hard in 2008 during the downturn but they remained patient and were selective in the retailers those chose. He said they sat with one tenant for 30 months and then they got Trader Joes. He's had 8 liquor stores negotiate with him for a space but they chose Total Wine for their shopping center. He said they chose Total Wine and the competition doesn't like Total Wine. They want their customers to want a different retail experience and Total Wine delivers it in the way their employees dress to how they educate their patrons. He said Total Wine has been very professional to work with and they've lived up to every written obligation presented to them. He said they've waited patiently for the ALJ process and now the ALJ has ruled so Total Wine deserves to be granted a license.

Oleson inquired as to why Total Wine had signage up on their space before they were granted a license.

Johnson explained signage is a separate process. Total Wine was preparing to open last year, received their sign permits, and installed a permanent sign. It's a separate license and installation. She said Costs Plus and Trader Joes understand Total Wine is a larger format liquor store, different from their stores, so all three stores welcome the other two to be successful.

Speaker #1: Mark Jacobson, Attorney Representing Total Wine
With regard to the Total Wine sign, he said when their application was submitted, it was initially recommended for approval so Total Wine wanted to get the store ready to open a year ago. On August 4th, the Council referred this to the ALJ who conducted a thorough hearing. He accepted every document and heard all of the arguments. He did what the Council appointed him to do. He said that led the ALJ to recommend the license be granted. He read from conclusion #7 and explained why the God Father's case was different. He said a reversal of the ALJ's determination would create a new set of rules and penalties only applicable to Total Wine and would not be applicable to any other liquor stores in Bloomington. He said Buck's Liquor had a history of violations in Bloomington and the set of rules that were imposed on them occurred when they tried to renew their license after the violations had occurred. He said Total Wine is requesting a level playing field. He said Total Wine has never had a violation of any kind in any of its stores. He commented Sam's Club reported they had 360 violations within a three-year period. He said staff recommended approval a year ago but then a lot of information was submitted to the City by the MN Beverage Association, which was also reviewed by the ALJ and the cities of Roseville, Burnsville, and Woodbury. They all approved licenses for Total Wine. He said Bloomington is the only community in the country that wants to grant them a license with conditions. He believes the conditions are unnecessary and are completely inappropriate. He grew up in Bloomington and attended school here and participated in BAA sports. They bought a house in 1991 and still live in it. He's proud to be a member of this community. He thought this was going to be a fair process but now he's embarrassed. He said the only fair decision was to send this to an ALJ. He asked the Council to do what the ALJ did by focusing only on the facts and grant this license.

Speaker #2: Mark Adkins, Bloomington Resident
He was invited to the "invitation only" meeting with Total Wine. He was impressed by Total Wine; their store and their community service. He's shopped in their stores in CA and NM. He recommends this application be approved without conditions, as he doesn't think this has been objectionably considered. He asked the Council to consider supporting it.

Speaker #3: Frank Bahl, Executive Director of the MN Beverage Ass'n.
He's not an attorney but an ex-cop. He works for the Minnesota Beverage Association (MBA). He understands the liquor industry and said this license application is no small thing. He said he's talked to the criminal justice department and the liquor regulators and everyone told him to be careful or he'd get sued by the Trones. The MBA represents 2100 liquor business members. He said he sent someone to make a purchase at the Roseville Total Wine store and reported they sold liquor below cost. He said it's against the law to sell liquor below cost. He talked about the MBA and its strong regulatory system. He said the Council has the power to grant or deny this license. He said Total Wine can't purchase liquor until the license has been approved by the State of MN because it involves the distribution of a controlled substance to the public. He represents anyone who sells liquor to the public at the Legislature. He said they fight hard for family businesses and fight against those who don't play fair. They lay down the laws to prevent violations. He requested Council deny this application. He said the MBA conducted its own investigation and learned Total Wine just stopped selling liquor below cost a couple of hours ago. He asked the Council to postpone this decision for six months or at least make them adhere to the conditions.

Lowman referenced the products sold by Total Wine under cost and asked if Bahl had a receipt.

Bahl provided receipts from Roseville and Burnsville and said Total Wine does a bait and switch.

Lowman asked how Total Wine is able to sell under cost and how Bahl knows they're doing it. Bahl explained how it happens. Baloga said it's not uncommon for members of the MBA to sell under cost also and Bahl said it's because it goes undetected.

Speaker #4: Bill Griffith, Representing the Minnesota Beverage Association. He said he wouldn't be here if it was simply a matter of competition but there are significant violations in the record and a significant list of violations that were not included. He said Bloomington has the best or one of the best licensing staff in the state of MN and has one of the largest in-house legal departments. He said the list of conditions suggested by the City Attorney should give the Council pause. He said the other cities had to contract attorneys for their reviews but Bloomington has its own staff and has a high standard. He commented on the cases when Bloomington said no to Fat Tuesday's and Godfather's. He said in the information he requested from the regulatory agencies, several violations were not included. He said this is a very aggressive national retailer that doesn't like the way this industry is regulated in MN. He talked about the stipulated record. He suggested maybe the Council should pause to see if the licensing problems for Total Wine catch up with them in Roseville and Burnsville. He said Total Wine made a calculated risk to spend \$1 million before Thanksgiving 2013 before their past history caught up with the owner. He said the conditions of approval are there because this retailer has a past and that should tell the Council to deny the license. He said this is an important decision and suggested Council deny this application and wait to see what happens in the other cities or approve it with conditions.

Speaker #5: Rachel Engebretson, Attorney Representing MGM Blmgtn. She said the City's decision to deny the Godfather's license was due to that applicant's failure to disclose violations as well as many unproven allegations relating to that applicant's prior conduct. She said Total Wine uses a deceptive practice. She said Minnesota is a three-tier liquor regulation state. On November 1, 2014, she sent a private investigator to the Roseville and Burnsville stores and the investigator asked about Winery Direct. She talked about Total Wine's deceptive practices at their two open stores in MN.

Winstead said there are people in the audience who would like to see Total Wine open in Bloomington and those that don't.

Motion was made by Lowman, seconded by Busse, and all voting aye, to close the public hearing on the Total Wine application for an off-sale intoxicating liquor license.

Winstead said this hearing did not bring forth any new information than what was previously presented. He referenced page 18 of the ALJ's report and talked about the settlements that were reached. He said there is a great mixed message from the ALJ. He restated the three scenarios for Council to consider: Approve, deny or approve with conditions. He said there's been conversation that has shifted from approval to approval with conditions. He looked at the violations in other states and looked at the size of their operation. He's troubled by some history and the way it was resolved and how it's been portrayed. He said if it's approved, the conditions can address the operating practices of this applicant. He said the applicant talked about a reversal but that was not the case. He said some complained about the competition factor but the Council said that is not a reason for denial.

Winstead said there are real issues with this applicant. He said the only way he'd consider approving this license is with the conditions. He believes staff has done a good job of creating conditions to keep this applicant on the straight and narrow and it allows City staff to enforce what's not being enforced by the State. He said the City is the enforcer of many State statutes and laws. He understands all that is here but believes a conditional approval is in order. He said he was troubled by some of the testimony that's been presented tonight on both sides of this one but Council has to work to a resolve.

Oleson said it makes him uneasy that Council is being asked to enforce State law. He doesn't recall any of the conditions referring specifically to State law but to Bloomington's City codes. He said the Council has to acknowledge it represents the wishes of the people. He said all customers want to get the best price; some want quality. He was raised to support local businesses. He will remain open minded as far as fine-tuning what the Council does here. He believes the Council needs to approve the license and that it should put conditions on it until Total Wine's track record has been proven. He commented the first conditions seem excessive and doesn't think it's necessary to have such strong language regarding the relationship between the City and Total Wine.

Lowman said he's spent over 20 hours studying this matter. The two pertinent pieces of information focus on one particular issue – the application that was provided to the City. He said a whole year has gone by since this application was initially recommended for approval. He said the Council needs to approve this application based on the standards the City provided. He commented staff's recommended conditions are very unique and very strange. He understands the testimony but said it's awkward that there was almost an approval and then all of a sudden there was more information in November 2013. He believes it's fair and right to allow the applicant to respond to those conditions. He said the rationale provided for why disclosure wasn't provided on the application appears reasonable. He said if the Council goes down the route of providing conditions, there are some market forces that are in play for enforcement and pricing. He said the Council should look at enforcement of the rules across the entire city with regard to pricing. He said the event room is something different and he'd like staff to be able to regulate it. He said he supports issuing the license but with limited conditions.

Winstead said new information from the MBA came to the City Attorney's office after staff's initial recommendation.

Abrams said she supports this license with no conditions whatsoever because it was forwarded to an ALJ to create the record and make a recommendation, which takes the politics out of it. She stated Council wasn't privy to all of the documents discussed but doesn't perceive in any way that this application was considered a hurdle, as was reported in the newspaper. She said she didn't speak with any reporters. She said the City requested a very distinguished lawyer make a decision without conditions. The City gave it to an ALJ to gather the information. She said Wilson said Total Wine is suitable to run this business based on the facts of the record. She said the conditions put forth relate to items that don't reference facts. They were not recognized as facts to determine suitability. She said to create some conditions and to go in a whole new direction for this City would create precedent and would send the wrong message to the business in the community. She won't vote for any conditions.

Baloga said he has more history than most on the Council, as he was here when this application initially came through. He said after hearing the history provided by Johnson, it seemed reasonable to delay this due to the amount of information that had to be reviewed. As time went on, Johnson recommended to the Council that it be forwarded to an ALJ because of the amount of time it would take in the course of a hearing to review the tremendous amount of evidence, while having the ability to take out the hearsay and unsubstantiated claims into a factual display. He believes Judge Wilson did a good job in his report of October 20. He said the ALJ recommended granting a license but Council has heard a lot of testimony today. He said the MBA brings forward a very serious allegation of selling below cost. He's disappointed that this is an item that they are not self-regulating all of their members on but they want to apply this standard to a new applicant. He stated most of the Kendall Jackson product he's purchased has been below cost and from other retailers in the city. He fully supports the ALJ's recommendation. He is disappointed that some of the information involving the Way Point investigation was not provided to the Council for its consideration when it was available. He accepts Heffelfinger's word regarding that information.

Busse said he was going to approach this liquor license the same way he considers all licenses regarding public health, safety and welfare. He said there are differing facts from two very good attorneys but believes the process was exhaustive and fair. He said everyone was given a voice. He said the City charged Judge Wilson with creating a record and determining if the license should be granted. He determined Total Wine has proven suitability to have a license in Bloomington. He doesn't see the conditions as being fair.

Carlson said his attention is drawn to the 5th whereas in the resolution. He said this is an extra ordinary business with an extra ordinary past. He said there have been extraordinary facts presented in this case so the Council needs to get this right. He said Bloomington is a community of hospitality and issues a lot of liquor licenses and does it well. He believes this was a fair and thorough process. He supports approving the license but with conditions to get it right. He supports removing Condition J. He doesn't see the conditions as being unreasonable for a license as important as this one.

Motion was made by Baloga, seconded by Abrams, to grant an Off-Sale Intoxicating Liquor license to DRT Wine & Spirits, LLC, dba Total Wine & More, without conditions, located at 4260 West 78th Street. Motion passed 5-2 (Winstead and Carlson opposing).

Mayor took a 5-min. recess at 10:32 pm.

Council Recessed

Mayor Winstead recessed the meeting.

Council Reconvened

Mayor Winstead reconvened the meeting following a 10-minute recess.

**6 DEVELOPMENT
BUSINESS: PUBLIC
HEARINGS**

6.1 Robert Smith; 10411 Aquila Avenue; RV Permit

Requested Action: Approve recreational vehicle permit and waiver of screening requirement, subject to the conditions listed in the staff report.

If Council denies the application, staff recommends the reasons for denial be discussed and the item continued to the November 17, 2014, Regular Council meeting for adoption of a resolution of denial.

Senior Planner Londell Pease presented the staff report. He explained normally this application wouldn't have come to Council but would have been handled by the Hearing Examiner. However, one property owner wouldn't consent to the proposed location of the RV. The applicant proposes to store a 23-foot trailer and boat in the northern part of his driveway from April – October. Staff recommended approval but the Planning Commission recommended denial due to the front yard location.

Council discussed the trailer size and location in conjunction to the sidewalk.

Speaker #1: Robert Smith, 100411 Aquila Avenue South (Applicant)
He is seeking a temporary parking permit to park his boat in his driveway. He picks it up the third week of April and transports it up north the first week in May. He brings it back for a week or two in June and July and then it goes out again in August and comes back October 1. He's been storing the boat in his driveway since 1984 when he received Council approval to widen his driveway. It has a boat cover on it and takes up the same amount of space as that of a wide pickup truck. He said there is no other location on his lot to park it.

Council asked why Smith was applying for a permit now after parking it on his driveway for 20 years. Smith replied he received a notice from the City indicating the boat and trailer didn't meet City Code. This required he go out and get signatures from his neighbors. He got them all except for the new neighbors that moved in to the north on the corner.

When asked how many days someone can park a trailer in their driveway, Pease replied a few; for loading and unloading. He said staff received a call from a resident so the City notified Smith of the Code violation.

Motion was made by Carlson, seconded by Abrams, and all voting aye, to close the public hearing.

Motion was made by Carlson, seconded by Lowman, to approve a three-year Recreational Vehicle permit subject to the 4 conditions listed in the staff report. No vote was taken at this time.

Oleson said there wasn't a lot of discussion at the PC meeting and they voted to deny it on a 3-2 vote. He said something that doesn't quite meet Code becomes a "what does the neighborhood think" issue and in a way, the Council is setting a precedent that waivers. He believes the vast majority of the neighbors are okay with it.

Winstead said he won't be supporting it, as he wants to be consistent. He doesn't believe RV's should be stored in the front yard and would support an ordinance change to that effect.

Abrams said she agrees with the Mayor and won't be supporting this either. She doesn't think people should have to look at an RV every day. That is not the kind of neighborhood the City wants to portray. She said winter storage might be another story.

Baloga said he will support this because there are a lot of people who use their driveway for parking trucks relating to their business and they are parked there year-round. He also said he thinks the ordinance should be reviewed.

Lowman said he supports this variance because it's for a short period of time, it's been parked there for so many years already, and there is no other location on the property to park it.

The Mayor called for a vote on the motion. It passed 5-2 (Winstead and Abrams opposing.)

6.2 Robert Shaw; 817 E Old Shakopee Road; Fence Variance

Requested Action: Adopt a resolution approving a variance to increase the maximum height of a fence from four feet to six feet in a side yard adjoining a street, subject to the conditions listed in the staff report.

If Council denies the application, they should discuss the reasons for denial and continue the item to the November 17, 2014, Regular Council meeting for adoption of a resolution of denial. In that case, staff will extend the agency action deadline.

Pease presented this staff report. He indicated where a 6-foot high fence could be located on the property, containing a two-family home with two rental units, without the need for a variance. He then showed where the applicant proposes to locate the fence. He said staff recommends approval. The Planning Commission, however, doesn't think a 6-foot chain link fence in the front of the house would look good. He said staff requests a condition be added that says, "any fence located along Old Shakopee Road must comply with the standards for a local street." He said arterial and collector streets can have 6-foot high fences in the front yard.

Speaker #1: Karen Hampton, 819 East Old Shakopee Road
She said her dad owns the duplex. She explained with 2-foot high snow drifts, her dog could jump over a 4-foot high fence.

Motion was made by Busse, seconded by Abrams, and all voting aye, to close the public hearing.

Winstead said he can support it but it is a tall fence and it ends up looking commercial. It's a back yard configuration on a side street.

Motion was made by Baloga, seconded by Lowman, to adopt a resolution approving a variance as described above subject to the condition listed in the staff report plus the additional condition recommended by staff that says any fence along Old Shakopee Road must comply with the standards for a local street. Motion passed 6-1 (Abrams opposing). (R-2014-120)

**7 TRANSPORTATION &
UTILITY
IMPROVEMENTS:
PUBLIC HEARINGS**

**7.1 Order 2015-101
Pavement Management
Program (PMP) Street
Reconstruction Project
Adopt Resolution**

Requested Action: Approve the Feasibility Report, adopt a resolution ordering Street Ref. No.'s 1-3 and 5-12 of the 2015-101 Pavement Management Program (PMP) Street Reconstruction Project, and Continue Street Ref. No. 4: Old Cedar Avenue between East Old Shakopee Road and the South Terminus to the December 1, 2014, Regular meeting.

Motion was made by Abrams, seconded by Lowman, and all voting aye, to continue to the December 1, 2014, Regular Council meeting, Street Ref. No. 4 Old Cedar Avenue (from East Old Shakopee Road to the South Terminus) due to neighborhood notification issue.

A joint staff presentation was made by Civil Engineer Bob Simons and Civil Engineer-Development Coordinator Jen Desrude. They presented a PMP overview, construction techniques, and responsibilities. They indicated streets without curb and gutter will be reconstructed to a width of 32 feet. It was stated staff uses the Adjusted Front Footage (AFF) calculation special assessments. The AFF is determined for the entire project to calculate the assessment rate. Everyone's rate was based on the Engineer's estimated project costs. The actual assessments will be sent in September 2015. There are two cost categories: Surfacing and Curb and Gutter.

Council inquired about staff's estimate. Desrude replied last year staff estimated high and the bid came in lower. They reported there is currently a shortage of concrete that is predicted to continue into 2015. They provided cost per foot information on the surfacing (approximately \$48/AFF for residential and \$95/AFF for other property types) and for curb and gutter (\$26/AFF for residential and \$53/AFF for other property types). They reviewed payment options. As some of the Fremont Avenue residents expressed concern with cut-through traffic, staff will look into possible traffic calming measures. It was noted the street will be reduced from 35 feet in width to 32. They also said some residents on Colfax and others in the area don't believe their section of street needs to be reconstructed. Some residents on 95th Street complained of cut-through traffic.

Council had no questions.

Mayor Winstead read the list of streets to be included in the 2015 PMP Street Reconstruction Project and requested audience members indicate by raising their hand if they desired to speak to a specific street so it could be held out for discussion. He noted correspondence was received regarding Street Ref. No. 1 (1st Avenue South), and held out the following streets for discussion: No. 2 (11th Avenue South), No. 10 (Fremont Avenue South), and No. 12 (Colfax Avenue South).

Motion was made by Baloga, seconded by Abrams, and all voting aye, to accept the Feasibility Report and adopt a resolution ordering Street Ref. No.'s 1 (1st Avenue South), No. 3 (West 95th Street), No. 5 (Dupont Avenue South), No. 6 (West 90th Street), No. 7 (Park Avenue South), No. 8 (Lyndale Avenue South), No. 9 (West 89th Street), and No. 11 (Emerson Avenue South). (R-2014-121)

Mayor Winstead requested public testimony on the streets that were held out for discussion.

- Street Ref. #2: 11th Avenue South

Speaker #1: Barb McIntosh, 9918 11th Avenue South
She commented residents are taxpayers and Total Wine is not so the taxpayers should take precedent. She said she's been calling the City for three years to find out what is being done about the garbage service. She said there are 18 trucks running up and down her street so she doesn't want her street redone until the number of trucks is reduced.

Winstead replied McIntosh has a valid point and reported the organized collection process is underway, which involves State statutes. He said it's not prudent, however, for Council to defer this project for that reason.

Motion was made by Oleson, seconded by Carlson, and all voting aye, to order Street Ref. No. 2 (11th Avenue South) to the 2015 PMP Project.

- Street Ref. No. 10: Fremont Avenue

Speakers #1: Steve & Denise Frichman, 8930 Fremont Avenue South
They attended the information meeting and said people were not happy with the estimates. They set out on a petition drive from 86th Street to 90th Street and reported there are 38 properties in the area; 4 are not being assessed and 24 oppose the project and signed the petition. They were unable to make contact with 5 property owners, as there was a language barrier with one owner, and another owner is in a group home.

Council questioned the Pavement Condition Index (PCI) for Fremont. Staff replied Fremont is proposed for reconstruction from 90th to 86th Street and said the northern section is the worst. The overall condition is 30 out of 100. They explained when streets get deferred, the costs are usually higher when it's done a couple of years later. Winstead said staff will have to send out a blind survey to everyone to verify the petition results are the same as what was presented. The same question will be posed to the residents.

Frichman said they're opposed to the curb and gutter. The street stays clear so it's not needed. They requested their street be deferred for 10 years, as their assessment is estimated to be approximately \$8,000, which is too high. He added an interest rate of 5% on the unpaid balance is also too high.

Speaker #2: Ken Young, 8924 Fremont Avenue South
He asked if the assessment is due in full by November 2015.

Bernhardson explained it can be paid off in full by November 29 2015, or it can be spread out over 10 years.

Young asked about the Deferral Plan and was referred to Desrude.

Speaker #3: Jan Gasterland, Representing Christ the King Lutheran Church
He said after discussing this project with their pastoral staff and in-house engineering staff, they've determined Fremont Avenue can remain in good condition with sealcoating. They're concerned with the environmental impacts of tearing up the old street and reconstructing a new street to marginally increase the quality of the street. He said they don't pay taxes but their assessment will be over \$48,000, which is a lot of money for the Church. They worry the design of the street will change with talk of more trails, paths and rain gardens. He said none of that is proposed for this street. For now it's proposed to be redone at the standard width of 32 feet with curb and gutter. He's noticed leaves are piling up in their parking lot and going down the storm sewer. He said many streets are being designed to a lesser width with some bike lanes. He said for a \$48,000 assessment, they'd rather see some environmental improvements. He's opposed to having curb and gutter because it causes the leaves to pile up.

Winstead said Fremont warrants a continuance to December 1 so a blind survey can be mailed to the property owners and requested staff follow up with Mr. Gasterland on the points he raised.

Motion was made by Baloga, seconded by Abrams, and all voting aye, to continue Street Ref. No. 10 Fremont Avenue South (from West 90th Street to West 86th Street) to the December 1 Regular Council meeting so that staff can survey the property owners.

- Street Ref. No. 12: Colfax Avenue South

Speaker #1: Dave Williams, 8816 Colfax Avenue South
He's lived here his entire life and remembers when Colfax was first overlaid. He said there is no curb or gutter on the 8600 block and it needs reconstruction but the 8700 block has curb and gutter and the 8800 and 8900 blocks remain in excellent shape. He said Dupont and Bryant aren't being done but they are a year older. He doesn't think it's fair that his road needs to be done because the equipment used to reconstruct the other roads will damage his street. He asked the City to pay for any street repairs on the 8800 and 8900 blocks of Colfax that get damaged by the contractor's equipment.

Simons reviewed the maintenance history on Colfax, Dupont and Bryant. The PCI rating on Colfax from 86th Street through 90th Street is 30.

Carlson said there is no separation in this segment. He said these are super blocks and at least half of it is in poor condition but the City needs to deal with the entire segment.

Bernhardson suggested the difference in the roads might be due to the soils in the area.

Speaker #2: John Serpa, 8826 Colfax Avenue
As a lifelong resident of Bloomington, he said an improvement was done back in 1980 and now he's looking at another \$6,500 assessment. He said they're caught in the middle, as there are three segments of this street. He asked the Council to consider at least some sort of grievance or a lesser assessment for those that have to go through another assessment.

Winstead said it was constructed only 25-30 years ago and now it's back.

Carlson inquired if the northern half could be reconstructed and the southern half overlaid.

Bernhardson said when Colfax was constructed in 1980, the standards weren't as good.

Lowman suggested laying this street over due to the grievance. He'd like staff to see if there is anything the City can do since it was reconstructed only 34 years ago.

Abrams asked if the interest could be waived on a project when a street needing reconstruction doesn't last the projected 40-year life span.

City Engineer Shelly Pederson replied this has happened before and the street has been reconstructed. She said staff could provide some examples of other similar situations if this is continued to December 1.

Bernhardson again commented bad soils in an area can cause streets not to last as long.

Motion was made by Abrams, seconded by Baloga, and all voting aye, to continue Street Ref. No. 12 (Colfax Avenue South) to the December 1 meeting to gain more information.

7.2 Adopt a resolution to order 2016-201 Normandale Boulevard (CSAH 34) between Nine Mile Creek and W. 94th St.

Requested Action: Approve the Feasibility Report and adopt a resolution ordering the 2016-201 Normandale Boulevard (CSAH 34) Project between Nine Mile Creek and West 94th Street.

Civil Engineer Julie Long presented the staff report. Her slide presentation included a project overview, project history, design highlights, ROW acquisition process, project costs, funding, property owner concerns, and next steps.

Baloga asked if the City has received the necessary approvals from the federal government on the changes submitted by the City.

Long replied the scope change has been approved through the Met Council but staff has not yet completed the approval process through the Minnesota Department of Transportation (MnDOT).

Baloga asked about the right turn lanes if no ROW was required.

Long replied staff wouldn't construct them because they are not justified.

Baloga said from his experience traveling on Normandale Boulevard in both the am and pm peak periods, right turn lanes are warranted.

Long said according to the accident history, most of the crashes involve left turns into the neighborhoods. She said it would cost \$1 million to add all of the right turn lanes at four locations.

Baloga said it was agreed a right-turn lane would be added from East Bush Lake Road to 86th Street, which carries less traffic than does Normandale.

Traffic & Transportation Engineer Kirk Roberts said the value doesn't warrant the right-turn lanes on Normandale.

Bernhardson said there would be a significant amount of acquisitions needed if right-turn lanes are to be explored.

Pederson said this item could be postponed to November 17 so staff can talk to the neighborhood about right-turn lanes but the eleventh hour is approaching in order to purchase the ROW.

Long said the project has to follow Federal requirements.

Pederson explained the turn lanes are part of one project and are bid as one project. Whatever is built with this bid is built under the Federal rules. She added right-turn lanes would be hard to add once the design is started.

Winstead asked if purchasing ROW would be required for right-turn lanes.

Long said there was feedback about right-turn lanes at the second informational meeting but residents would have to be notified if right-turn lanes are going to be considered.

Motion was made by Baloga, seconded by Abrams that the City bond for any right-turn lanes on Normandale as part of the 2016 PMP Project. No vote was taken at this time.

Baloga withdrew his motion after Bernhardson explained a motion should be made on the main design of the Normandale Project and then it can be amended.

Speaker #1: Bud Batterson, 9315 Briar Lane (Planning Commissioner)
He talked about keeping what they have; the berm and the lilacs. He asked about a widening of the street and a taking of the land on the west side of Normandale. He requested a berm be added with plantings to act as a buffer. He said the 10-foot trails on each side are a lot of trail and asked if it was necessary to go that wide. He doesn't believe the right-turn lanes are necessary. He requested a berm and the screening be returned.

Speaker #2: Greg Gusweiler, 9172 Toledo Road
He lives on Toledo Road and is concerned with the cut-through traffic but said he's glad the pork chop was removed from his property. He requested the left-turn restrictions remain as part of the project. He uses the current path sometimes but doesn't feel safe. He asked what measures have been put in place to assure the viability of these paths in 2034 and if there was any usage data related to the paths. He said the path width could be looked at and asked why narrower sidewalk plows couldn't be used along Normandale. He said 10-foot paths on both sides of the road are a lot of path and worries cars could run off the road. He doesn't understand why a project that costs so much doesn't include buried power lines. He said the City could do that for what the neighborhood is going through. He said the power lines will be visible when the trees are removed.

Winstead explained it's very expensive to bury power lines. He said Xcel would do it but they would then increase the electric rate for every taxpayer in Bloomington. It's out of the City's control unless it wants to pay for it.

Speaker #3: Gary Abrams, 5311 Mt. Normandale Drive
He said he attended all three meetings and reported traffic has increased immensely. He picks up people after they've had an accident at the corner. He asked about noise mitigation, as nothing was addressed about it and the sound comes right up the hill and bounces off the house. He suggested a 4-foot berm with some vegetation be built to help block some of the noise. He mentioned being told there was no money for sound mitigation because it doesn't meet the requirement to do so adding he was promised sound mitigation when this road was done in the 1980s. He asked the City to do something regarding sound mitigation. He said it's a nice road but it's going to get worse.

Bernhardson said a 4-foot berm with hedges might provide some noise mitigation but might not do what the residents had envisioned.

Speaker #4: Russ Crawford, 8900 Southwood Drive
He strongly supports this project, as his daughters were involved in a car accident on this road.

Speaker #5: Mike Littmann, 9172 Utica Avenue South

They had no hesitation in buying that property 19 years ago because there were woods behind their house. He said those trees are now in jeopardy. He has a problem with the process. In 2013, residents received a letter that said staff was merely doing some surveying. He said no one has knocked on his door during those 19 years. He said no one asked to talk to him about this project. He said the grant funding was submitted in 2012. He read about this process in the newspaper. He asked Council if they knew how much land is needed for left-turn lanes plus 10-foot paths on both sides of the road. He asked if the residents are okay with this. He doesn't know how much of his land is in jeopardy because he said the City won't give it to him. He said staff said it would take 25 feet of his property, which is 18% of his property; 35 feet equals 25% of his property. He reported the trees on his property are 8 feet in circumference and are 80 years old. He said the process needs to be improved. City staff needs to collaborate with the residents, as they're confused. He said they don't know what's on or off the table. The data indicates 30,000 cars go through this stretch in a day, and in a year, there are 7 accidents in this mile long stretch of roadway. He asked staff to determine if this is the most accident prone area in the city, as there were 9 accidents in 2013. He read the reports on all of the accidents in 2013 and described the factors involved in the different accidents. He said what he sees on a daily basis doesn't jive with the data staff has provided. He doesn't understand why 20 feet will be taken for bike trails. He asked Council to dig down deeper into the data. He believes in the process but believes changes are needed. He recommended surveying the residents.

Speaker #6: Thomas Forte, 9108 Utica Avenue South

He's lived there since 1978. His yard backs up to Normandale. He said it's become a difficult place to live with the added traffic on Normandale. He said these improvements are a major invasion into his property and he doesn't think he'll be able to stay there. He said the changes on Normandale are incremental until it becomes a freeway. He said his home will have no value after the improvements.

Speaker #7: George Wilkinson, 9156 Utica Avenue South

His house butts up to Normandale. He appreciates what the City is doing and said it will be a great project. He is looking forward to it. He believes the power poles will have to be moved. They've lived there for 35 years and the noise has always been there. They're looking forward to the trails. He trusts the City to do it right. He is looking forward to seeing how the engineers handle the design and gave the project thumbs up.

Winstead said the Council needs to have a heightened sensitivity as to what it means with regard to the ROW on Utica. He asked if it would be possible to block cars from turning left onto Toledo and asked if that kind of process would require less ROW.

Pederson replied there was always going to be signage for the southbound left-turn rush hour restrictions onto Toledo.

Wilkinson said the neighborhood was petitioned years ago about blocking off the left-turn lane at Toledo but was told it was needed for emergency access.

Long explained the poll results were split 50/50 so there was no real consensus reached regarding closing the left-turn lane. She said the height of the retaining wall varies throughout the project and there will be tree removal. She said Hennepin County figures in the cost of replacing vegetation and adds that into their appraisal.

Motion was made by Baloga, seconded by Busse, to close the public hearing. It passed 6-0 (Abrams temporarily absent).

Council asked if the trail has to be on both sides of Normandale and if the width could be modified. Long replied the people who were pro-trail were concerned with mixing pedestrians and bikes but said it could be narrowed to 8 feet on each side.

Busse believes a nicer trail will get used and is justified on both sides.

Public Works Director Karl Keel said the proposal includes a multi-use trail on both sides of Normandale. As staff develops the plans in more details, the Council will see them in the final design stage.

Bernhardson said staff will look at 8-foot wide trails.

Lowman asked about keeping the berms in there with vegetation.

Long replied there are low walls and high walls but said staff will talk to the forester to see what should be planted there.

Winstead asked staff to see if there are ways to mitigate sound. He asked if the vegetation is proposed for the top of the wall.

Long explained the proposal is to build a 6-foot board on board fence on top of the retaining wall.

Motion was made by Oleson, seconded by Abrams, to adopt a resolution ordering the design and construction of City Project 2016-201 Normandale Boulevard (CSAH 34) between Nine Mile Creek and West 94th Street and giving staff latitude to minimize the path width. No vote was taken at this time.

Baloga then amended his motion, which was seconded by Lowman, to add right-turn lanes at four intersections (Mt. Normandale Drive, Northwood Ridge, Southwood Drive, and Norman Ridge Drive North) and to bond for them in the 2016 PMP Project. No vote was taken on this amendment.

Winstead said there are right turns coming off of Normandale but questioned if they are warranted.

Bernhardson said there will be significant impacts to the property owners with free right turns.

Busse said he would characterize this as a want rather than a need and doesn't believe it's necessary for the project.

Winstead said he agrees with three of the right turns.

Oleson amended his motion again, which was seconded by Lowman, to only add three right-turn lanes at Mt. Normandale, Northwood Ridge, and Southwood Drive, to soften the right turn at Norman Ridge Drive North, and to include this in the bonding for the 2016 PMP Project. No vote was taken at this time.

Carlson said he's not convinced the right turns are needed.

The Mayor called for the vote on the amendment. It passed 5-2 (Busse and Oleson opposing).

The Mayor then called for a vote on the amended motion, which was as follows:

Motion was made by Oleson, seconded by Abrams, and all voting aye, to adopt a resolution ordering improvements for Normandale Boulevard (CSAH 34) – Nine Mile Creek to 94th Street (City Project 2016-201) with direction to staff to minimize the ROW encroachment and maximize sound mitigation by narrowing both bike paths to 8 feet in width where prudent and logical, to soften the right turn at Norman Ridge Drive North, and to add three right-turn lanes at Mt. Normandale Drive, Northwood Ridge, and Southwood Drive funded with 2016 bonding dollars per Council's amendments. This item is continued to the November 17, 2014, for possible reconsideration of the right-turn lanes if, after providing notification to all affected property owners, more public comment is desired. (R-2014-122)

8 ORDINANCES: PUBLIC HEARINGS

9 OTHER: PUBLIC HEARINGS

10 ORGANIZATIONAL BUSINESS

10.1 City Council Policy & Issue Update

The City Manager reminded Council of the regular meeting on November 17, the November 24th study meeting (he'll be gone). He reminded Council of the City Manager interviews on December 1 and 2, the regular meetings on December 1 and 15.

Winstead reminded Council of the public hearing on the 2015 Tax Levy and General Fund Budget is on December 1.

Bernhardson added the Joint Council/School Board meeting will be rescheduled from December 3 to December 10.

10.2 2015 Internal Service Fund Budgets Adopt Resolution

Requested Action: Adopt a resolution establishing the 2015 Self-Insurance, Insured Benefits and Facility and Park Maintenance Internal Service Fund budgets.

Motion was made by Baloga to continue this item to the next meeting but the motion failed for lack of a second.

Budget Manager Cindy Rollins provided the staff report on the Internal Service Fund budgets, which she said are recommended for approval.

Motion was made by Oleson, seconded by Abrams, and all voting aye, to adopt a resolution adopting the 2015 Internal Service Fund budgets as presented and described above. (R-2014-123)

No public testimony was received.

10.3 2015 Enterprise Fund Budgets Adopt Resolution

Requested Action: Adopt a resolution establishing the 2015 Police Contractual, Motor Vehicle Licensing, Center for the Arts and Aquatics Enterprise Fund budgets.

Motion was made by Lowman, seconded by Abrams, and all voting aye, to adopt a resolution adopting the 2015 Enterprise Fund budgets as presented and described above. (R-2014-124)

No public testimony was received.

**10.4 2015 Special Revenue
Fund Budgets Adopt
Resolution**

Requested Action: Adopt a resolution establishing the 2015 Public Health, Police, Communications and Fire Grants Special Revenue Fund budgets.

Baloga inquired if the majority of the revenue for the Pension Fund comes from the General Fund.

Bernhardson replied the City has been using the positive performance to fund it. He said it's not budgeted in 2015.

Motion was made by Lowman, seconded by Abrams, to adopt a resolution adopting the 2015 Special Revenue Fund budgets as presented and described above. Motion passed 6-1 (Baloga opposing). (R-2014-125)

No public testimony was received.

11 ADJOURN

Mayor Winstead reminded everyone to get out and vote later today and adjourned the meeting at 2:47 a.m.

Barbara Clawson
Council Secretary